

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA,)
)
Plaintiff,)
vs.) Case No: 11-241 (DRD)
)
ANTHONY TORRES-LOPEZ,)
)
Defendant.)

TRANSCRIPT OF SENTENCING HEARING
HELD BEFORE
THE HONORABLE JUDGE DANIEL R. DOMINGUEZ
Monday, June 18, 2018

A P P E A R A N C E S

For the United States:

Mr. G. Andrew Massucco-LaTaif, AUSA

For the Defendant:

Mr. Diego Alcala-Laboy, Esq.

1 (PROCEEDINGS COMMENCED AT 10:42 A.M.)

2
3 DEPUTY CLERK: United States of America versus
4 Anthony Torres-Lopez.

5 MR. MASSUCCO: Good morning, Your Honor. On
6 behalf of the United States, we are ready to proceed.

7 MR. ALCALA: Good morning. Diego Alcala on behalf
8 of Mr. Torres. He is being brought in from custody.

9 DEPUTY CLERK: The defendant is present in court.
10 He will be assisted by the official court interpreter.

11 MR. ALCALA: Your Honor, just to inform the Court,
12 he is fully bilingual and he has -- he was born in the
13 United States. I believe that he will be waiving, as he has
14 done in the past, the use of an interpreter.

15 THE COURT: Okay. Very well. Sir, your lawyer
16 just advised the Court that you are fully bilingual and that
17 you do not need a translator. Is that the case?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: All right. Marshal, please take the
20 handcuffs away from this gentleman. Thank you, sir.

21 All right. Has the presentence report been duly
22 explained to the defendant?

23 MR. ALCALA: Yes, Your Honor. We were able to see
24 the presentence report, and I explained to him the changes
25 made and the addendum to the presentence -- the addendum and

1 the new presentence report that came out a month ago. We
2 did discuss this last Friday at MDC when he was brought back
3 to the jurisdiction.

4 THE COURT: All right. So have you had sufficient
5 time to be prepared for this case?

6 MR. ALCALA: Yes, Your Honor. We did file on
7 Thursday a sentencing memorandum also regarding this case.

8 THE COURT: All right. And if he had any
9 questions, did you duly address them --

10 MR. ALCALA: Yes, Your Honor.

11 THE COURT: -- to him to his full satisfaction?

12 MR. ALCALA: I explained it to the best of my
13 abilities, Your Honor, and I think that he was satisfied
14 with my answers.

15 THE COURT: Sir, did you listen to all the
16 questions that I just asked your lawyer?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: Did you hear his answers?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Okay. Is he making a correct
21 representation to the Court?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: All right. Okay. So I will hear your
24 allocution on his behalf. I am aware that you filed a
25 sentencing memorandum, sir.

1 MR. ALCALA: Yes, Your Honor.

2 THE COURT: Go right ahead.

3 MR. ALCALA: This case is the last one of the
4 La Perla cases, as the Court is aware. Mr. Anthony Torres
5 and the Government, along with this attorney, came with an
6 agreement -- proposed agreement to the Court which
7 incorporated a few things. And it's basically -- I believe
8 the intent here was to plead guilty but also to take into
9 account that he was not a fugitive. He has been in custody,
10 federal custody, since 2012, and this matter should have
11 been resolved way earlier, Your Honor. If it wasn't for the
12 actions of Mr. Torres specifically, I don't know if he would
13 have been brought back at the time that he would have.

14 So we propose to the Court an agreement that the
15 Government felt, and along with the defendant, is fair.

16 THE COURT: What is the fair agreement?

17 MR. ALCALA: Well, Your Honor, as discussed in the
18 plea agreement --

19 THE COURT: I know. I just want you to reiterate
20 it.

21 MR. ALCALA: Yes, Your Honor. We agreed on a
22 60-month sentence, to be served concurrent with the
23 undischarged term of the criminal case in New York City,
24 Case Number 11-569 (PAC), for which he is still serving, and
25 to give him credit not just for the time in which he was

1 arraigned until the sentencing date, which is standard, or
2 at least the Court has always considered that along with
3 BOP, but also to give him the six months for which he had
4 been waiting at MDC to be brought -- from the moment he got
5 to MDC to the moment he was brought --

6 THE COURT: What is the sentence then?

7 MR. ALCALA: Six months plus the time period from
8 December all the way here. And then, as I explained --

9 THE COURT: From December to all the way here he
10 is under custody of the Feds. That's all right, right?

11 MR. ALCALA: Yes, Your Honor, but as the PSR noted
12 and we also noted in our sentencing memorandum, when you are
13 serving a particular period of time, it will be counted
14 towards the other case, not towards this case. So we would
15 need to depart or adjust that particular period of time.

16 THE COURT: So I sentence him to 54 months. Is
17 that enough?

18 MR. ALCALA: No.

19 THE COURT: No? Why?

20 MR. ALCALA: Well, it's proper and the Court can
21 do that. What we are asking for is not only the 54 --
22 because the 54 would account for the six-month period from
23 June to December, so when he was brought to the jurisdiction
24 to the moment he was arraigned, but it does not account for
25 the moment when he was arraigned to the moment that we are

1 standing here today. So it's those two time periods that
2 need to be considered and then sentenced to in order for him
3 to get that --

4 THE COURT: United States.

5 MR. MASSUCCO: Judge, I don't believe that's
6 correct.

7 THE COURT: I don't either, but I just wanted --

8 MR. MASSUCCO: I never heard of a guy being in
9 jail down here and charged since December and not getting
10 credit for the time he is here. Although we have kind of
11 acquiesced the fact that the Court award him an illegal
12 sentence of 54 months, anything below that --

13 THE COURT: The legality is because if I don't do
14 that, there is going to be a mess out there.

15 MR. MASSUCCO: No, Your Honor. That's fine. The
16 only one -- if he were to appeal his unlawful sentence, he
17 would be on the losing end of -- in the end. So we think
18 that although we agreed on a 60-month sentence, the best way
19 to effectuate that would be a sentence of 54 months in this
20 case.

21 THE COURT: 54 months because if not, you may have
22 trouble with the Marshal in crediting him. That was my
23 thought. But why? Let's go through your request again.

24 MR. ALCALA: Okay. So I believe, as I pointed out
25 in the sentencing memorandum, Your Honor, the section that

1 correctly Probation noted, which is 5G1.1, we have the
2 statute -- let me back up.

3 We have a statute which indicates that BOP is
4 responsible for calculating credit along with the length of
5 a sentence. We also have a statute that indicates that when
6 calculating credit, the credit will be awarded to that
7 particular individual if that credit for which he is being
8 detained on the particular sentence has not been counted on
9 another case.

10 In this particular scenario, we believe that that
11 other case would be the New York case. So then we take into
12 account --

13 THE COURT: The New York case is not the La Perla
14 case.

15 MR. ALCALA: That is correct, but we have decided
16 that it was relevant conduct and so -- such as has been
17 advised by the Government and such as has been reflected in
18 the PSR, Your Honor. That's why that conviction does not
19 carry any points when you look at the criminal history
20 because it is considered relevant conduct.

21 What we are asking for then is to add those
22 particular time periods, based on the fact that we
23 believe -- and again, we may be incorrect, but we believe
24 that BOP will not be crediting that period of time from
25 December, which is the arraignment date, all the way to the

1 sentencing date.

2 MR. MASSUCCO: Once he is arraigned, it's a matter
3 of law that he is credited that time. Judge, it has nothing
4 to do with BOP's calculations. Once he is arraigned, as a
5 matter of law, he gets credited from that date. There's
6 nothing -- an adjustment -- to now give him additional time
7 is ridiculous. He's already being credited for that time.

8 MR. ALCALA: We are not putting -- let me just be
9 very clear. We are not asking anything different from what
10 the Government is stating. We are not asking for a period
11 that will not be credited. Our only concern was that if the
12 Court -- Probation, I believe, also has made that same
13 agreement with what the Government just stated.

14 THE COURT: I think he is going to get credit for
15 all the time from arraignment on, plus the six months that
16 the Court is going to provide him because he was waiting six
17 months.

18 MR. ALCALA: We don't have a disagreement with the
19 Government's intent along with our intent. We are the same,
20 Your Honor. My only concern was that because of the fact
21 that he has been serving prior, that the BOP will not credit
22 that time. But if I am incorrect --

23 THE COURT: That's why I am sentencing him to 54.
24 All right?

25 So sir, you are entitled to perform an allocution

1 on your behalf as to the sentence in this case. You don't
2 have to make an allocution, but you are certainly entitled
3 to. But the decision is yours, not ours.

4 THE DEFENDANT: I would like to say -- I want to
5 say today, Your Honor, I stand before the Court of the
6 Honorable Judge Dominguez. I would like to take this
7 opportunity to apologize to the United States Government,
8 its citizens, and my community for my criminal conduct. I
9 apologize to all parties affected by my actions, to
10 everyone who was put in danger by my activities. I accept
11 my punishment without reservation. I apologize especially
12 to my family for putting them --

13 THE COURT: Is your family here?

14 MR. ALCALA: They were not able to make it, Your
15 Honor. We have been in contact with them; not only his
16 sister, but also his mother who is in Caguas.

17 THE COURT: Go ahead. Please continue.

18 THE DEFENDANT: I apologize especially to my
19 family for putting them through this situation. I would
20 like to say I'm sorry to my children for the time we have
21 lost and the time we will lose. Be brave, and your father
22 will not be incarcerated forever. I apologize to my family
23 who raised me with love and taught me right from wrong. I'm
24 sorry for departing from the path that you laid out in front
25 of me.

1 To my lawyer, Mr. Alcala, I would like to extend
2 my gratitude for the wise counsel and competent handling of
3 this matter. I would not have been able to make it through
4 without your valuable assistance.

5 In closing, I thank the Court for his time and
6 disposition of my case. And I would request the minimum in
7 order to spend the most possible time raising my children,
8 for my actions since incarceration reflect my total
9 commitment to rehabilitation, and I ask Your Honor for the
10 chance to continue in this commitment.

11 THE COURT: Thank you, sir.

12 MR. MASSUCCO: Judge.

13 THE COURT: Yes, sir.

14 MR. MASSUCCO: In discussing with my co-counsel
15 from the office, there may be an issue of the time since
16 December. So if the Court could specifically award him the
17 six months credit plus credit for time served since his
18 arraignment in this jurisdiction, that language should be
19 sufficient to clear up any BOP issues. Because technically,
20 once he is serving a sentence, until discharged, he is only
21 credited for serving that sentence. But if the Court does
22 say specifically the 54 months, giving him credit for the
23 six months prior and credit for time served since December,
24 that should suffice.

25 THE COURT: That's what I will do.

1 MR. ALCALA: Your Honor, briefly. Again, we refer
2 to the PSR, and as to the language --

3 THE COURT: The PSR has precisely -- they have
4 precisely -- that's what they suggested me to do.

5 MR. ALCALA: Yes, Your Honor. I am not
6 disagreeing with that.

7 THE COURT: Those are the people that are
8 attempting to help him the most. I was going to say
9 60 months, and clear it up with the Marshal --

10 MR. ALCALA: I appreciate --

11 THE COURT: -- or with the -- whoever it is.

12 MR. ALCALA: I appreciate everyone's effort in
13 clearing this up. I am just concerned that by just stating
14 "time served" -- we just want to be very clear that it's the
15 six months plus time served. And if the Court wants to put
16 the dates, that would be more helpful for BOP --

17 THE COURT: Go ahead. Give me the dates.

18 MR. ALCALA: I think he was arraigned
19 December 2nd, if I am not mistaken. That would be
20 arraignment.

21 THE COURT: December 2nd of --

22 MR. ALCALA: 2016. And again --

23 THE COURT: Of 2016, all right.

24 MR. MASSUCCO: The 17th, Your Honor.

25 THE COURT: What is the date?

1 MR. ALCALA: I'm sorry, Your Honor. I believe
2 it's December 2nd. It's in the docket. I do apologize. I
3 don't have that on me right now.

4 THE COURT: Ana?

5 DEPUTY CLERK: Just one second, Your Honor.

6 THE COURT: Okay. Thank you.

7 DEPUTY CLERK: Arraignment/bail hearing was held
8 on December 15, 2016.

9 MR. ALCALA: Correct.

10 THE COURT: When was it, Ana?

11 DEPUTY CLERK: December 15, 2016.

12 THE COURT: Okay. Thank you. Then the dates that
13 he was --

14 MR. ALCALA: He was brought into the jurisdiction
15 approximately six months before that, which I believe,
16 according to one of the exhibits that I filed, it's June 21,
17 2016.

18 THE COURT: All right. Okay. Now, I just looked
19 at the presentence report as to the -- any physical or
20 mental health that he may be needing. No history of mental
21 or emotional problems, but there is history of drug use.
22 But this case has a weapon charge, so he would not receive
23 the credit, but he may be receiving the drug treatment.

24 MR. ALCALA: I think that he took a particular
25 drug treatment program while he was serving in the New York

1 case, Your Honor. I think he did 40 hours. We can
2 certainly request it again on this particular case.

3 THE COURT: Okay. Very well. Okay. Thank you.

4 So is there any reason why the Court should not
5 enter sentence at this time?

6 MR. ALCALA: Not that we know of, Your Honor.

7 THE COURT: Okay. On January 25, 2018, the
8 defendant, Anthony Torres-Lopez, pled guilty to Count One of
9 the indictment filed in Criminal Case Number 11-CR-00241,
10 which charges a violation of Title 21 U.S.C. Section
11 841(b)(1)(B), 846, and 860, a Class B felony. The
12 November 1st edition of the United States Sentencing
13 Guidelines has been used to apply the advisory guideline
14 adjustments pursuant to the provisions of Guideline
15 Section 1B1.11(a).

16 The guideline for a Title 21 U.S.C. 841 offense is
17 found at United States Guidelines 2D1.1 of the guidelines.
18 That section provides that conspiracy to possess with intent
19 to distribute at least 500 grams but less than two kilograms
20 of cocaine within a thousand feet of a protected location
21 has a total base offense level of 26 pursuant to United
22 States Guidelines 2D1.2(a)(1) and 2D1.1(a)(5).

23 Since the defendant has demonstrated acceptance of
24 responsibility for his participation in the offense, the
25 offense level is reduced by three levels pursuant to

1 Guideline Section 3E1.1(a) and (b). There are no other
2 applicable guideline adjustments.

3 Based on a total offense level of 23 and a
4 criminal history category of II, the guideline imprisonment
5 range for this offense is from 60 to 63 months, with a fine
6 range of 10,000 to 10 million, plus a supervised release
7 term of eight years.

8 The Court has reviewed the advisory guideline
9 calculations and finds that the presentence investigation
10 report has adequately applied the guideline computations.
11 The guideline computations satisfactorily reflect the
12 components of this offense by considering its nature and
13 circumstances. Furthermore, the Court has considered the
14 other sentencing factors set forth at Title 18 U.S.C.
15 Section 3553(a).

16 Mr. Torres is a 39-year-old U.S. citizen, resident
17 of New York, who has four dependents. He completed his
18 12th-grade education and was unemployed prior to being
19 incarcerated. He has no reported mental health issues. As
20 to physical health, he reported having serious dental
21 problems causing loss of teeth. Further, Mr. Torres has a
22 reported history of substance abuse to include marijuana and
23 non-prescribed Percocet. This is Mr. Torres' fifth known
24 arrest and his third conviction.

25 Lastly, the Court has taken into consideration the

1 elements of the offense, Mr. Torres-Lopez's participation in
2 the same within the drug trafficking conspiracy at La Perla
3 in San Juan, Puerto Rico.

4 Moreover, the Court has also considered all the
5 other factors of 18 U.S.C. Section 3553, the elements of the
6 offense, the plea agreement between the parties, and the
7 need to promote respect for the law and protect the public
8 from further crimes by the defendant, as well as addresses
9 the issues of deterrence and punishment. The Court deems
10 that a sentence below the guidelines is a sentence that is
11 just but not greater than necessary, and the Court will
12 explain it a little further on.

13 The defendant is serving a federal imprisonment
14 term for the Southern District of New York, 11-CR-569. He
15 was transported to the Metropolitan Detention Center in
16 Puerto Rico on June 21, 2016, and brought up for the instant
17 matter, and it took them six months to arraign the
18 defendant, as he was arraigned on December 15, 2016.
19 Therefore, the Court will depart downward pursuant to United
20 States Guidelines 5G1.3(d), a period of six months, which is
21 time served in connection with the offense of conviction.

22 So from June 21, 2016 to December 15, he
23 remained -- that entire period, he remained sitting there in
24 prison. Nothing happened. So the Court is going to provide
25 him the credit from December 15 -- excuse me, from June 21,

1 2016 to the arraignment date of December 15, 2016.

2 Okay. After the Court has taken that out,
3 therefore, it is the judgment that Mr. Anthony Torres-Lopez
4 is hereby committed to the custody of the Bureau of Prisons
5 to be imprisoned for a term of 54 months. Those 54 months
6 start with the date of the arraignment, and he is credited
7 until that date.

8 Upon release -- now, sir, beware. There is a bit
9 of confusion here in Puerto Rico. A federal sentence is
10 composed of two parts. One is the actual time of
11 imprisonment, which in this case is 54 months, dating back
12 to the date of arraignment. But a federal sentence is
13 composed of two parts; not only the actual custodial time,
14 but the time under supervised release. And this crime was a
15 crime in a place near a school and also near facilities that
16 qualify for the higher end of supervised release. So you
17 will have to serve eight years of supervised release.

18 Now, there are some new laws now that if you
19 behave, the United States Probation Office may file motions
20 and request the Court to diminish the term. But as of now,
21 you have to serve eight years under supervised release. Do
22 you understand that?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: Be it here in Puerto Rico, be it in
25 New York, or wherever you decide you are going to reside.

1 All right. Do you understand that?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: Okay. These are your conditions, sir.

4 The defendant shall not commit another federal, state or
5 local crime, and shall observe the standard conditions of
6 supervised release recommended by the United States
7 Sentencing Commission and adopted by this Court. The
8 defendant shall not unlawfully possess controlled
9 substances. The defendant shall refrain from possessing
10 firearms, destructive devices, and other dangerous weapons.

11 The defendant shall participate in transitional
12 and re-entry support services, including
13 cognitive-behavioral treatment services under the guidance
14 and supervision of the United States Probation Office. The
15 defendant shall remain in the services until satisfactorily
16 discharged by the service provider with the approval of the
17 Probation Office.

18 The defendant shall provide the U.S. probation
19 officer access to any financial information upon request.
20 The defendant shall cooperate in the collection of a DNA
21 sample as directed by the probation officer pursuant to the
22 revised DNA collection requirements and Title 18 U.S. Code
23 Section 3563.

24 Now, this condition is new, sir. It has been
25 applied for the last three or four years. It is related to

1 drugs and to weapons, and the emphasis is drugs and crimes
2 of violence. And the selling of drugs near a protected
3 location is considered a very serious offense.

4 The defendant shall submit to a search of his
5 person, property, house, residence, vehicle, papers,
6 computers, and other electronic communication or data
7 storage devices or media and effects, all as defined at
8 Title 18 U.S.C. Section 1030(e)(1), to a search at anytime,
9 with or without a warrant, by the probation officer and, if
10 necessary, with the assistance of any other law enforcement
11 officer in the lawful discharge of the supervisory functions
12 of the probation officer, with reasonable suspicion
13 concerning unlawful conduct or a violation of condition of
14 probation or of supervised release.

15 The probation officer may seize any electronic
16 device which will be subject to further forensic
17 investigation and analysis. Failure to submit to such a
18 search and seizure may be grounds for revocation. The
19 defendant shall warn any other residents or occupants that
20 their premises may be subject to a search pursuant to this
21 condition.

22 In consideration of the Supreme Court's ruling in
23 Riley v. California, the Court will order that any search of
24 the defendant's phone by Probation while the defendant is on
25 supervised release be performed only if there is a

1 reasonable articulable suspicion that a specific phone owned
2 or used by the defendant either contains evidence of a crime
3 or evidence of violation of release condition, was used in
4 furtherance of a crime, or was specifically used during the
5 actual commission of a crime.

6 This is basically a condition, sir, that if they
7 understand -- while Probation is providing the services of
8 watching you to make sure you are not violating the law, if
9 they understand that once again you are in drugs or you have
10 weapons or you have plans to carry on yet another felony,
11 they can -- under reasonable suspicion, they can search your
12 house, your car, and your belongings. Do you understand
13 that?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: The defendant shall participate in an
16 approved substance abuse monitoring and/or treatment
17 services program. The defendant shall refrain from the
18 unlawful use of controlled substances. And you shall submit
19 to a drug test within 15 days of release, thereafter, submit
20 to random drug testing, not less than three samples during
21 the supervised period, and not to exceed 104 samples per
22 year in accordance with the drug aftercare program policy of
23 the United States Probation Office, approved by this Court.

24 If deemed necessary, the treatment can be arranged
25 by the officer in consultation with the treatment provider.

1 The defendant is required to contribute to the cost of
2 services rendered, co-payment, in an amount arranged by the
3 probation officer based on your ability to pay or
4 availability of third-party payment.

5 The Court finds that the conditions imposed are
6 reasonably related to the offense of conviction and to the
7 sentencing factors set forth at 18 U.S.C. Section 3553.
8 Further, the Court finds that the conditions imposed are
9 consistent with the Sentencing Commission pursuant to
10 Title 28 U.S.C. Section 994(a), and there is no greater
11 deprivation of liberty than what is reasonably necessary to
12 fulfill all the sentencing objectives, including
13 rehabilitation, positive reintegration to the community,
14 just punishment and deterrence.

15 Having considered Mr. Torres-Lopez's financial
16 condition, a fine is not imposed. A special monetary
17 assessment in the amount of \$100 is imposed, all relating to
18 the Crime Victim Fund, as required by law.

19 Has that been paid, Counsel?

20 MR. ALCALA: Not yet, Your Honor.

21 THE COURT: Okay. So the Court grants him the
22 time that he will continue to serve for him to save the
23 \$100, and pay it when you exit.

24 The Court encourages that you take educational
25 courses. So before I finish then, do you have any idea of

1 matters that you would like to study or matters that you
2 would like to receive special education so that when you
3 come out, you can be a more profitable person for the
4 benefit of your four children and yourself?

5 THE DEFENDANT: Your Honor, since I have been in
6 FCI Fort Dix, I have taken wood shop. I have taken
7 flooring --

8 THE COURT: Okay.

9 THE DEFENDANT: -- which I would be interested in
10 getting --

11 THE COURT: You would like to return to Fort Dix;
12 is that it?

13 THE DEFENDANT: Yes.

14 THE COURT: Okay. So Ana, so the Court
15 recommends -- highly recommends that this defendant can
16 serve the remaining part of his sentence at Fort Dix,
17 New Jersey.

18 Now, what type of courses would you like to take
19 there, in addition to those that you may have already taken,
20 sir?

21 THE DEFENDANT: There is an advanced program that
22 I think Seton Hall was giving. I was in the process of
23 taking it, but I got -- I had to come on this writ.

24 THE COURT: Okay. So the Court recommends that
25 you take -- give me the name of the course --

1 THE DEFENDANT: The course was business
2 management.

3 THE COURT: -- business management. That was
4 being offered by Seton Hall?

5 THE DEFENDANT: Yes.

6 THE COURT: Seton Hall University. They are in
7 West Orange, New Jersey. So I imagine that they send
8 persons to Fort Dix to provide that education. Right?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: All right. Anything further
11 health-wise, sir? Health-wise -- have all your teeth been
12 now corrected?

13 THE DEFENDANT: No, Your Honor. There is a
14 waiting process.

15 THE COURT: So the Court recommends and orders
16 that during the rest of his time in service, that you be
17 provided with the treatment of your teeth as required under
18 3553(2)(d), which refers to medical treatment.

19 THE DEFENDANT: Thank you, Your Honor.

20 THE COURT: All right. Now, any other physical
21 matter that the Court should take care of you at this time?

22 THE DEFENDANT: No, Your Honor. Since day one,
23 when I turned myself in on February 6, 2012, I notified
24 that -- about the Puerto Rico situation. On my sentencing
25 transcript it was also mentioned. And I just wanted to get

1 this out of the way so that I could start being a new
2 citizen, you know, being there for my kids.

3 THE COURT: All right. I hope -- you are still a
4 young man, sir. So go ahead. All right. Good luck to you.

5 The defendant can appeal his or her conviction if
6 the defendant, that is you, believes that your guilty plea
7 was somehow unlawful or involuntary -- well, I don't think
8 it was either unlawful or involuntary because I have
9 sentenced you to what you agreed, and what you agreed was
10 the minimum sentence under the law, and the Court has gone
11 downward on it because you have served six months before you
12 were arraigned, all right -- or if there is other
13 fundamental defect in the proceedings that was not waived by
14 your guilty plea.

15 Generally, as a defendant, you also have the
16 statutory right to appeal your sentence under certain
17 circumstances, particularly if you think the sentence is
18 contrary to the law. However, a defendant may waive those
19 rights as part of the plea agreement. And you have entered
20 into a plea agreement in which you waived your right to
21 appeal substantive issues regarding both your conviction and
22 your sentence in this case. Such waivers are also generally
23 enforceable and, as such, a defendant may waive substantive
24 challenges to the conviction and sentence. However, if you
25 believe your waiver of your right to appeal your judgment of

1 conviction and sentence is not enforceable because there is
2 a procedural defect, you can present that theory to the
3 Appellate Court.

4 Sir, with few exceptions, any notice of appeal
5 must be filed within 14 days of judgment being entered in
6 your case. If you are unable to pay the cost of an appeal,
7 you may apply for leave to appeal in forma pauperis. If you
8 so request, the clerk of the court will prepare and file a
9 notice of appeal on your behalf.

10 The Court directs that the transcript of the
11 sentencing proceedings be forwarded to the Sentencing
12 Commission, United States Bureau of Prisons, as well as the
13 Probation Office within 30 days.

14 Counsel, have I left anything in the ink bottle
15 that I think your client -- or that you think your client
16 should be receiving?

17 MR. ALCALA: Your Honor, we respectfully request
18 the Court to impose a concurrent sentence with the New York
19 case along with, if possible, a copy of the sentencing
20 transcript. And the sentencing transcript --

21 THE COURT: You are entitled to the sentencing
22 transcript.

23 MR. ALCALA: Yes. I just wanted to do it on the
24 record, Your Honor, because of the fact that -- I just
25 wanted the client to understand that we will be requesting

1 one.

2 THE COURT: Any further request that is not what I
3 illustrated in this sentence is denied, because I have
4 provided you all the terms.

5 MR. ALCALA: I got completely lost, and I agree.
6 There is nothing else. I was just asking the Court. And
7 that would be all. Thank you very much.

8 THE COURT: Thank you. United States?

9 MR. MASSUCCO: That's it, Your Honor. We have
10 nothing further, except for --

11 THE COURT: You don't have to dismiss any charges
12 as to this defendant?

13 MR. MASSUCCO: Remaining charges be dismissed.

14 THE COURT: The remaining charges as to the
15 defendant are ordered to be dismissed with prejudice.

16 MR. ALCALA: Thank you, Your Honor.

17 THE COURT: Sir, good luck again, all right. I
18 like your style. I think you were being extremely honest
19 with the Court. You were born in 1979. That's 21 years,
20 and now we have 18, so you are 39 years old. Life
21 expectancy is over 70. Stay away from the drugs. Life
22 expectancy is way over 70, all right. So good luck to you.

23 THE DEFENDANT: Thank you, Your Honor.

24 PROBATION OFFICER: Your Honor, if I may. I
25 apologize to the Court. Malissa Aponte, United States

1 Probation Office. I wanted to clarify. I don't believe I
2 heard the concurrency with the New York case, so that he may
3 be -- benefit from that additional time that he's been held
4 since arraignment. I don't believe --

5 MR. ALCALA: That was my request right now, to ask
6 the Court to impose a concurrent sentence with the case in
7 New York, which is the 11-569(PAC) case, which is part of
8 the plea agreement that was proposed to the Court.

9 THE COURT: Granted. Concurrency is granted.

10 MR. ALCALA: Thank you.

11 THE COURT: So there you go. Anything further?

12 MR. ALCALA: That would be all.

13 MR. MASSUCCO: Thank you, Your Honor.

14 THE DEFENDANT: Have a nice day.

15 (PROCEEDINGS ADJOURNED AT 11:21 A.M.)
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1 UNITED STATES DISTRICT COURT)
2) ss.
3 OF PUERTO RICO)
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5 **REPORTER'S CERTIFICATE**
6
7

8 I, LISA O'BRIEN, do hereby certify that the above
9 and foregoing, consisting of the preceding 26 pages,
10 constitutes a true and accurate transcript of my
11 stenographic notes and is a full, true and complete
12 transcript of the proceedings to the best of my ability.

13 Dated this 8th day of December, 2018.
14

15 S/Lisa O'Brien
16 Lisa O'Brien
17 USDC Court Reporter
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